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March 19, 2010

BY HAND-DELIVERY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW, Room #100
Washington, DC 20423-0001

Adrian L. Steel, Jr.
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Re: Docket No. 42104, *Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific R.R. and Missouri & Northern Arkansas R.R. Co. Inc.*; Finance Docket 32187, *Missouri & Northern Arkansas Railroad – Lease, Acquisition and Operation Exemption – Missouri Pacific R R and Burlington Northern R.R.*



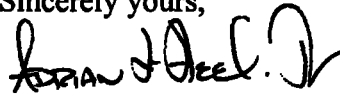
Dear Ms. Brown:

Enclosed for filing in the above-captioned proceedings are the original and ten (10) copies of BNSF Railway Company's Response to Entergy's Motion for Leave to File Second Amended Complaint. Also enclosed is a CD with the text of the pleading in Word format.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Please contact me if you have any questions. Thank you.

Sincerely yours,


Adrian L. Steel, Jr.

ENTERED
Office of Proceedings

MAR 19 2010

Part of
Public Record

Enclosures



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC., Complainants,

v.

UNION PACIFIC RAILROAD COMPANY and
MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC., Defendants.

MISSOURI & NORTHERN ARKANSAS R.R. –
LEASE, ACQUISITION AND OPERATION
EXEMPTION – MISSOURI PACIFIC R.R.
and BURLINGTON NORTHERN R.R.

Docket No. 42104

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Finance Docket No. 32187

**BNSF RAILWAY COMPANY'S RESPONSE
TO ENTERGY'S MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT**

Pursuant to 49 CFR Section 1104.13, BNSF Railway Company ("BNSF") respectfully submits its Response to Complainants' Entergy Arkansas, Inc. and Entergy Services, Inc. (collectively, "Entergy") Motion for Leave to File Second Amended Complaint filed on March 11, 2010.

As set forth below, Entergy's Motion should be denied, since BNSF has committed in writing to Entergy to cooperate with Missouri & Northern Arkansas Railroad Company, Inc. ("MNA") on the development of a through route movement without the necessity of an STB order specifically directed to BNSF. Entergy complains nonetheless that BNSF's commitment is

insufficient because BNSF has been unwilling to “unequivocally” commit to participate in a through route ordered by the Board, and thus BNSF should be made a party. Entergy has, however, failed to provide BNSF with sufficient information for BNSF to be able to fully evaluate a through route with an MNA interchange at Lamar, Missouri and/or Aurora, Missouri. BNSF remains willing to provide service over a commercially reasonable through route if it obtains the necessary information. There is no basis under the Board’s December 30, 2009 decision in this proceeding or the statutory mandate under 49 U.S.C. 10705 to require BNSF to become a defendant in this proceeding.

FACTS

1. As stated in Entergy’s Motion, Entergy recently sent a letter (dated February 11, 2010) to BNSF requesting (i) that BNSF confirm that it would be willing to cooperate with MNA on a through route for movement of South Powder River Basin (“PRB”) coals to Entergy’s Independence Station using Lamar, Missouri and/or Aurora, Missouri as the locations for a BNSF/MNA interchange; and (ii) that BNSF provide Entergy with its revenue requirements for unit train coal transportation service from South PRB as well as North PRB origins to each of the two stated interchange locations.

2. BNSF responded to Entergy by letter dated March 4, 2010. In its letter, BNSF stated that BNSF is willing to cooperate with MNA on the development of a through route movement as described in Entergy’s letter without the necessity of an STB order specifically directed to BNSF. (A copy of BNSF’s March 4, 2010 letter is attached hereto as Exhibit A). BNSF further stated that it would need certain matters addressed before it would be able to

provide Entergy with revenue requirements for such a through route movement, and thus to commit to participation in a particular route or routes.

3. As BNSF's letter reflects, the items that BNSF asked Entergy to address before BNSF would be able to provide Entergy with revenue requirements for the BNSF portion of a through route include:

- How Entergy proposed that BNSF would recover any capital investments required for BNSF to provide interline service with MNA via Lamar and Aurora.
- Information regarding the manner in which MNA would interchange unit train coal traffic with BNSF, including the following operational parameters: (i) the anticipated physical interchange location (*i.e.*, whether physical interchange would occur on BNSF or MNA track); (ii) any operation limitations present on the contemplated routes (*i.e.*, the number of railcars per unit train that can be accommodated by MNA in interchange or limitations on the MNA frequency or schedule of service); and (iii) locomotive power arrangements that would be required (*i.e.*, whether run-through power would be provided or MNA would provide their own locomotives, MNA's requirements in terms of horsepower and configuration, and whether MNA would anticipate performing the required inspections and/or fueling).

4. Given that Entergy has completed its inspection and analysis of the MNA lines and prospective interchange facilities and has information concerning the location and manner of the proposed interchange operations, it was reasonable for BNSF to request Entergy to provide the listed information. That information would be required for BNSF to review the anticipated interchange operation(s) and would assist BNSF in determining whether there are any operational limitations present on the contemplated joint movement and whether BNSF had a preference regarding potential interchange points.

5. To date, Entergy has not responded to BNSF's letter.¹

ARGUMENT

1. Initially, Entergy's Motion for Leave should be denied because BNSF has, consistent with the Board's December 30, 2009 decision denying MNA's motion to dismiss, committed to participate in a Board-ordered through route to the extent that it can, absent the information requested in its March 4, 2010 letter. Rather than respond to BNSF's letter and provide the information, Entergy seeks to add BNSF as a defendant.

2. BNSF should not be subjected to the expense and interference with its business operations that are inherent in being made a defendant because of Entergy's failure to timely pursue whether BNSF would agree to participate in a through route and because of its failure to respond to BNSF's requests for information that would enable BNSF to make a decision.

3. Nothing in the Board's December 30, 2009 decision requires BNSF to commit to a through route without the information it requires to determine whether that route is commercially reasonable. In this regard, the Board stated the following in its June 26, 2009 decision which required Entergy to use Section 10705:

Any shipper faced with a situation where a railroad refuses to interchange the shipper's traffic with another carrier may seek a Board order to compel the creation of a new interchange and through route. As a general matter, a railroad has a right to rationalize its system and to provide service over its most efficient routes. But a carrier may not defeat legitimate competitive efforts of other rail carriers and shippers by foreclosing more

¹ It should be noted that Entergy's February 11, 2010 letter and BNSF's March 4, 2010 response constitute the only communication (oral or written) between Entergy and BNSF concerning a BNSF-MNA through movement to Entergy's Independence Station since the Board's December 30, 2009 decision. Thus, Entergy's assertion that it has "conferred" with BNSF concerning possible through routes and possible interchanges is, to the extent Entergy seeks to imply a continuing back and forth discussion, overstated.

efficient service. *Thus, the Board may exercise its authority under section 10705 to order a carrier to open another route if a party demonstrates that the bottleneck railroad has exploited its market power by (1) providing inadequate service over its lines or (2) foreclosing more efficient service over another carrier's line.*

UP and MNA cannot contract away the statutory rights of a third party or neglect their own obligations under the statute. Thus, if Entergy or AECC can demonstrate that, due to this interchange commitment, UP and MNA are providing inadequate service or foreclosing more efficient service over another carrier, we may direct that a new route be opened and order MNA to establish a common carrier rate for interchange with that other carrier.

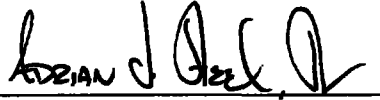
Entergy Arkansas, Inc., et al. v. Union Pacific R.R., et al., STB Docket No. 42104 (served June 26, 2009) at 7. (Emphasis added, footnotes omitted.)

4. Entergy has not alleged in the Second Amended Complaint that BNSF is a bottleneck carrier in this situation or that BNSF has exploited market power by providing inadequate service or by foreclosing more efficient service within the meaning of Section 10705.

CONCLUSION

Based on the above, Entergy's Motion for Leave should be denied. BNSF has confirmed its willingness to participate in a commercially reasonable through route, and BNSF is unable to make any further commitment absent the information requested in its March 4th letter to Entergy. In addition, there is no need to add BNSF as a defendant since no relief can be ordered against BNSF based on the Second Amended Complaint and the present record.

Respectfully submitted,



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Attorneys for BNSF Railway Company

March 19, 2010

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response to Entergy's Motion for Leave to File Second Amended Complaint have been served by on the following:

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BRIAN J. BELL

Exhibit A



Sami M. Shalah
Vice President
Coal Marketing

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March 4, 2010

Mr. Ryan Trushenski
Project Manager Solid Fuel Operations
Entergy Services, Inc.
10055 Grogans Mill Road
The Woodlands, Texas 77380

Re: Independence Steam Electric Station

Dear Ryan:

I am writing in response to your February 11, 2010 letter requesting (i) that BNSF confirm that it would be willing to cooperate with M&NA on a through route for movement of SPRB coals to Entergy's Independence Station using Lamar, Missouri and/or Aurora, Missouri as the locations for a BNSF/M&NA interchange; and (ii) that BNSF provide Entergy with its revenue requirements for unit train coal transportation service from SPRB as well as NBPR origins to each of the two stated interchange locations.

BNSF remains willing to cooperate with M&NA on the development of a through route movement as described in your letter without the necessity of an STB order specifically directed to BNSF. However, the preliminary matters identified below need to be addressed before BNSF would be able to provide Entergy with revenue requirements for the BNSF portion of such a move.

In my November 5, 2009 letter, I highlighted the fact that potentially substantial infrastructure upgrades would be required to bring any of the five proposed interchange locations, including Lamar and Aurora, up to a level to support unit train coal service. As previously explained, BNSF would not be willing to undertake the capital investments required for BNSF to provide interline service with M&NA via Lamar or Aurora unless a commercial arrangement was put in place that assured our recovery of those investments. Your letter gives no indication of how Entergy proposes that BNSF would recover those investments, and in the absence of such an arrangement, we remain unable to proceed in developing the revenue requirement you have requested.

In addition, in order to provide a revenue requirement for the BNSF portion of the contemplated joint movement, we need certain information regarding the manner in which M&NA would interchange unit train coal traffic with BNSF. We understand that Entergy has completed its inspection and analysis of the M&NA lines and prospective interchange facilities and has information concerning the location and manner of the proposed interchange operations that we would appreciate receiving. Specifically, we would need to understand the following key operational parameters to determine our revenue requirement: (i) the anticipated physical interchange location (i.e., whether physical interchange would occur on BNSF or MN&A track); (ii) any operation limitations present on the contemplated routes (i.e., the number of railcars per unit train that can be accommodated by the MN&A in interchange or limitations on the MN&A frequency or schedule of service); and (iii) locomotive power

March 4, 2010
Mr. Ryan Trushenski

Page Two

arrangements that would be required (i.e., whether run-through power would be provided or MN&A would provide their own locomotives, MN&A's requirements in terms of horsepower and configuration, and whether MN&A would anticipate performing the required inspections and/or fueling). As you can imagine, such information is needed to enable BNSF to evaluate train cycles and other service parameters in determining BNSF's revenue requirement, and we will be unable to respond to your request for revenue requirements absent such information.

Entergy has also likely gathered information concerning the extent and costs of upgrades and improvements that would be required on the M&NA lines to accommodate unit train coal traffic, and that information would be useful for BNSF to review in the context of further understanding the anticipated interchange operations and might also assist us in gauging the extent of the capital expenditures required on the BNSF lines for our portion of the contemplated joint movement. Review of these details, as well as the operating parameters anticipated by the MN&A for the Lamar or Aurora interchanges, might also result in a preference for BNSF regarding the potential interchange points.

Finally, in October of 2009 you requested a contract proposal from BNSF to transport to Entergy's White Bluff Station the very same limited tons described in your October 22, 2009 request and again covered by your February 11, 2010 request for transportation to the Independence Station. BNSF has previously served the White Bluff Station directly in coal unit train service, and we provided you with the requested contract proposal to cover all the tons here at issue through 2014. We reiterate our view that such a joint route to the Independence Station would be significantly more costly given the need for capital upgrades and interchange operations and likely less efficient than single-line BNSF unit train coal service to the White Bluff Station. To date, we've not received a response to our contract proposal. Given the clear advantages of a BNSF-direct movement to White Bluff over a joint movement to the Independence Plant, we believe it would be mutually beneficial to pursue transportation of the tons covered by this letter to the White Bluff Station and would appreciate your feedback regarding our initial proposal.

Sincerely,



Sami Shalah

cc: Tom Epich